IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.7508 OF 1998

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

PANKAJBHAI JASUBHAI PATEL
VERSUS
TALUKA DEVELOPMENT OFFICER & ORS.

Appearance:
MR JF BHARDA for petitioner
MR AMIT BHATT for respondent No.1 & 2
None present for respondent No.3

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 07/08/2000

C.A.V. JUDGMENT

#. The petitioner, in this special civil application, prayed for following reliefs:

(A) Be pleased to admit this petition;

(B) Be pleased to issue a writ of mandamus of any other appropriate writ, order or direction in the nature of mandamus directing respondent No.1 to inquire into the matter and to recover from respondent No.3 herein the entire amount of octroi collected during the intervening period up to 17.7.1998 and to give appropriate credit thereof to the petitioner against the amount of octroi Ijara of Rs.21 lacs offered by the petitioner;

(C) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus holding and declaring that the demand by respondents No.1 and 2 of 10% of the amount of octroi Ijara towards District Panchayat Cess from the petitioner is illegal, arbitrary, and without any authority of law; and be further pleased to hold that the petitioner is liable to pay total amount of Rs.21 lacs only towards the octroi Ijara for the period upto 31.3.1999 including the amount of octroi collected and deposited by respondent No.3 during the intervening period upto 17.7.1998; and that the petitioner is not liable to pay any amount towards District Panchayat Cess;

(D) Pending hearing and final disposal of this petition this Hon'ble Court may be pleased to direct the respondents No.1 and 2 to accept the monthly installments of Rs.1,75,000=25 from the petitioner towards octroi Ijara for the period upto 31.3.1999 subject to the petitioner's right to have adjustment of the entire amount of octroi collected by respondent No.3 during the intervening period upto 17.7.98, without insisting for further payment of Rs.21,997.75 towards District Panchayat Cess;

(E) Pending hearing and final disposal of the petition this Hon'ble Court may be pleased to direct the respondents No.1 and 2 not to take any action whatsoever against the petitioner for not having signed the agreement at annexure-D, and not to insist the petitioner to sign the said agreement in its present form till final disposal

of this petition;....

#. The octroi Ijara was given in favour of the petitioner by the Gram Panchayat concerned in pursuance to the order of this court dated 17th July 1998 made in special civil application No.4537/98. The learned counsel for the petitioner raised manifold contentions during the course of arguments but as what I think that it is a case where this matter pertains to civil dispute arising from the octroi contract and many disputed question of facts are to be gone into, the appropriate remedy is civil suit and all the contentions are not to be referred and to give findings, otherwise where the petitioner files the civil suit, it may prejudice his case.

#. It is a case of octroi Ijara given in favour of petitioner for Rs.21 lacs and if the petitioner considers that he was not liable to make payment of 10% of the Ijara amount towards the District Panchayat Cess, it is a civil dispute. For this, many facts are to be gone into, that is what was the agreement between the parties, etc. Similarly other claim made that the amount collected by respondent No.3 towards the octroi for the period in dispute is to be given set off in the amount of Rs.21 lacs, it is also a matter of contract and for adjudication of the same, many disputed questions of fact are to be decided for which this writ petition is not proper remedy.

#. As a result, this special civil application fails and the same is dismissed only on the ground that looking to the nature of dispute raised by petitioner in this special civil application, the only appropriate remedy for him is to file civil suit. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

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(sunil)